

# HAFETZ NECHELES & ROCCO

ATTORNEYS AT LAW

500 FIFTH AVENUE  
NEW YORK, N.Y. 10110  
TELEPHONE: (212) 997-7595  
TELECOPIER: (212) 997-7646  
E-MAIL: INFO@HNRLAWOFFICES.COM

March 20, 2012

VIA ECF

Honorable Frederic Block  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza  
Brooklyn, New York 11201

Re: U.S. v. Pedro Espada, Jr. et al.  
10-CR-985 (FB)

Dear Judge Block:

With respect to the testimony of Brian Feldman, the defense is moving to strike the questions and answers on the following portions of the transcript:

- Page 778, lines 4-13 and 17-23
- Page 779, lines 14-22
- Page 780, lines 10-13, 21-22, 25
- Page 781, lines 1-13
- Page 782, lines 1-17
- Page 789, lines 24-25
- Page 790, lines 1-2, 22-24
- Page 791, lines 1, 7-9, 13-22

In this series of questions and answers, the government elicited Mr. Feldman's opinion that the bidding process used by Soundview in leading to the award of the janitorial contract to SME in early 2008 violated HRSA's policy as reflected in government exhibit 303.

As discussed previously, the issue of whether the bidding process complied with HRSA regulations is irrelevant to the bid rigging charge against the Espadas. The essence of the bid rigging charge is that the Espadas defrauded Soundview into awarding a contract to SME at a higher cost than was necessary by inflating the bids of competitors. Thus, the jury's focus should be on whether the government can prove beyond a

HAFETZ NECHELES & ROCCO

reasonable doubt that bids were inflated and that, consequently, the Board of Directors of Soundview was defrauded.

Whether or not the bidding process complied with HRSA's rules and regulations is beside the point entirely. Mr. Feldman has testified that HRSA regulations were violated in his view, not because bids were inflated, but simply because SME did not actually submit a bid. In his opinion, that was not "consistent with the rule of free and open competition." Tr. at 791.

In this criminal case, the only issue is what the board was told about the bids, if anything, and consequently whether the board was defrauded. The federal regulations, as well as Mr. Feldman's view of whether they were complied with, is irrelevant.

Mr. Feldman's testimony has a great potential to prejudice the defendants and confuse the jury, whose attention should be placed on whether bids were inflated and whether the board of directors was defrauded, not on whether HRSA regulations were followed.

Wherefore we respectfully request that the jury be instructed to disregard Mr. Feldman's testimony concerning HRSA's rules and regulations and his opinion that such rules and regulations were violated by the bidding process which occurred in connection with the award of Soundview's janitorial contract to SME.

Very truly yours,

By: /s/Susan R. Necheles  
Susan R. Necheles  
Hafetz Necheles & Rocco  
500 Fifth Avenue, 29<sup>th</sup> Floor  
New York, NY 10110  
Telephone: (212) 997-7595  
Facsimile: (212) 997-7646  
*Attorney for Pedro Espada Jr.*

/s/ Russell Gioiella  
Russell Gioiella  
Litman Asche & Gioiella  
140 Broadway  
New York, NY 10005  
Telephone: (212) 809-4500  
Facsimile: (646) 607-9643  
*Attorney for Pedro Gautier Espada*